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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 265

NORTH AMERICAN COMPANY,
Appellant,

vs.

WILLIAM K. KOERNER, JUDGE OF THE CIRCUIT COURT, CITY OF ST. LOUIS

APPEAL FROM THE SUPREME COURT OF THE STATE OF MISSOURI

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS

SEBASTIAN C. PUGLIESE,
PAUL DILLON,
CLAUDE O. PEARCY,
Counsel for Appellee.



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SUPREME COURT OF MISSOURI

No. 40,643, No. 40,644, No. 40,645—Consolidated

NORTH AMERICAN COMPANY, A CORPORATION,
Appellant,

vs.

WILLIAM K. KOERNER, JUDGE OF THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
Appellee

STATEMENT OF MATTERS OR GROUNDS MAKING AGAINST JURISDICTION OF THE UNITED STATES SUPREME COURT, INCLUDING MOTION TO DISMISS.

I

The Supreme Court of Missouri by its judgment dissolved and discharged the preliminary rules in prohibition in the three consolidated cases. In and by that judgment it holds that appellee, as Judge of the Circuit Court of the City of St. Louis, has jurisdiction in attachment of stock of a domestic corporation owned of record by appellant, a non-resident corporation, without seizure of certificates evidencing such shares, when made by a notice to the Secretary of the domestic corporation. This judgment is a construction of the statutory law of Missouri and involves no question of due process of law under the Fourteenth Amendment of the Constitution of the United States. The state-

ment of appellant that such construction does involve due process is a mere conclusion.

II

There is no final judgment either by appellee or by the Supreme Court of Missouri. Appellant invoked the jurisdiction of appellee, as Judge, by motion to quash a return of the Sheriff of the City of St. Louis as to attachment of shares of stock. That motion was overruled and further action in said cause by appellee Judge was sought to be prohibited by the writ of prohibition, which was eventually denied by the Supreme Court of Missouri. No final judgment against appellant has been rendered, and the record shows that there is no final disposition of the cause as to other defendants. Under such conditions no jurisdiction can vest in an appeal to the United States Supreme Court.

III

The opinion and judgment of the Supreme Court of Missouri, as well as the record, show that no matters therein involve due process. The Supreme Court of Missouri in its opinion has construed a statute of Missouri so as to affirm the method of attachment of corporate stock owned by a non-resident in a domestic corporation as that method has been pursued in this and other states. Decisions of the Supreme Court of Missouri and of the Supreme Court of the United States uphold such procedure, as in the following cases:

Armour Bros. Banking Co. v. *St. Louis National Bank*, 113 Mo. 12, 20 S. W. 690;

Richardson v. *Busch*, 198 Mo. 174, 95 S. W. 894;

Jellenik v. *Huron Copper Min. Co.*, 177 U. S. 1, 20 S. Ct. 559, 44 L. Ed. 647.

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An attachment so levied involves no question of due process under the Fourteenth Amendment to the Constitution of the United States:

Ownbey v. *Morgan*, 256 U. S. 94, 41 S. Ct. 433, 65 L. Ed. 837, 17 A. L. R. 873;

Wilson v. *Standefer*, 184 U S. 399, 22 S. Ct. 384, 46 L. Ed. 612.

Sec. 1442, R. S. Mo. 1939 (providing for dissolution of attachments against non-residents upon the entry of appearance by them in the cause).

IV

The Supreme Court of Missouri construes the Uniform Stock Transfer Act and Section 13 thereof as adopted by the Missouri Legislature, as retaining its former method of levy upon shares of stock in a domestic corporation; such construction does not involve any question of due process.

WHEREFORE, appellee moves that the appeal be dismissed.

SEBASTIAN C. PUGLIESE,
PAUL DILLON,
CLAUDE O. PEARCY,
Counsel for Appellee.